IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6288 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JYOTSNABEN M PATEL

Versus

DIRECTOR OF MUNICIPALITIES

Appearance:

1. Special Civil Application No. 6288 of 2002

MR PK JANI for Petitioner No. 1

Ms Harsha Devani, AGP for Respondent No. 1

MR NV ANJARIA for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/07/2002

ORAL JUDGEMENT

Draft amendment granted.

2. Rule. Ms.Devani, Ld.AGP for respondent No.1 and

Mr.Anjaria for respondent NO.2 waive service of rule respectively. With the consent of parties matter is taken up for final hearing.

3. The short facts of the case are that the petitioner was elected as the councillor of the Patan Municipality (hereinafter referred to as "the Municipality") in the month of January, 2000. Thereafter, she was also elected as the President of the Municipality. It is the case of the petitioner that the statutory term of the petitioner as a councillor of the Municipality is for five years which would be upto 2005. The Director of Municipalities issued a show cause notice on 7.3.2002 to the petitioner under section 37 read with Section 70 of Gujarat Municipalities Act (herein after referred to as "the Act") on the ground that the petitioner in the capacity as the President has diverted the laying down of pipeline from Vivek Motors to Karmabhoomi road which was not sanctioned since the sanctioned line was from Vivek Motors to Vegetable Market. The petitioner in response to said show cause notice submitted reply and contended interalia that since there is no residential locality from Padmanabh to Vegetable Market area and since there are large number of residential colonies from Vivek Motors to Karmabhoomi society via Padmanabh with a view to see that the drinking water facilities are provided to the residents if the area from Vivek Motors to Karmabhoomi the petitioner had taken decision in anticipation of the approval. The case of the petitioner is that the said action is also approved by the general body in its meeting dated 22.3.02 vide resolution No.578 and the general body has gone to the extent that since the decision was in the larger public interest, the expenses, if not sanctioned, may be paid from the funds of the Municipality. The contention of the petitioner, in substance, was that the decision is taken for the betterment of the residents of the area and is not for personal gain or otherwise and it is further contended that there is no malafide intention in taking such decision.

4. The Director of Municipalities, ultimately, after hearing the petitioner passed order on 1.7.2000 whereby a composite order is passed in as much as the petitioner is removed from the post of President of the Municipality under section 37 of the Act and the order is also passed for recovering the amount of Rs.24,492.33ps under section 70 of the Act. The petitioner has challenged the said order dated 1.7.2000 passed by the Director of Municipalities in the present petition.

5. When the petition came up for hearing before this court on 8.7.02 the learned counsel for the petitioner had declared that the present petition is restricted to the challenge to the impugned order so far it relates to exercising power under section 37 of the Act and so far it relates to the order under section 70 of the Act the petitioner sought to have recourse of preferring appeal as available under the Act. In that view of the same, the petition is restricted to the challenge qua the order of removal only and therefore the matter requires to be examined accordingly.

6. After the notice was issued by this court as per order dated 8.7.02 the petitioner has brought on record the draft amendment dated 16.7.02 whereby the order dated 16.7.02 of the Gujarat Municipal Finance Board granting post-facto sanction for diverting the pipeline from Vivek Motors to Karmabhoomi society is produced on record. The contention of the petitioner is that on account of said post-facto sanction granted by the competent authority, namely, Gujarat Municipal Finance Board, it can not be said that any breach is committed by the petitioner or there is any misuse of funds by the petitioner since the said decision is accepted by the authority who had power to sanction the amount for laying down the pipeline for water connection. It is further submitted by the petitioner that pending the petition on 17.7.02 the election for the posts of President and Vice President has already taken place and one Mansukbhai Patel is elected as President in place of petitioner. Therefore, Mr.Jani submits that on account of the order of removal the petitioner could not function as the President of the Municipality for the remainder of the term of the President.

7. Normally, when the order of removal has lived life for the remainder term of the petitioner as President of the Municipality I would have considered the matter as having become infructuous by afflux of time since the petitioner is no more the President of the Municipality. However, Mr.Jani for the petitioner submits that if this order of removal as the President of the Municipality is allowed to continue it might create complications against the petitioner in contesting the election as the Councillor of the Municipality in view of the provisions of section 11(1) of the Act and therefore I find it proper to examine the matter on merits more particularly keeping in view the status of the petitioner as the councillor and the disqualification which may be attached thereto for the purpose of contesting the

election as the councillor of the Municipality.

8. On behalf of the State Govt Ms.Devani, Ld.AGP has submitted that merely because the post-facto sanction is granted, it would not affect the order of removal passed by the Director of Municipalities and she further submitted that so far as the order of removal as the President of the Municipality is concerned, the order has in any case lived its life and the removal is continued and therefore the matter substantially has become infructuous and she also submitted that so far as the contest of the petitioner as the Councillor of the Municipality, keeping in view the provisions of section 11(1) of the Act is concerned that stage has not reached and therefore she submitted that no interference is called for.

9. It is true that the order of removal as the President of the Municipality in case of the petitioner has lived its life since fresh election of the President of the Municipality has taken place on 17.7.02 and the petitioner is no more the President of the Municipality and not only that but even by afflux of time the statutory term as the President of the Municipality is also over on 17.7.02 since newly elected President has also taken charge and therefore for the post of President of Municipality and removal as President of the Municipality is concerned, the petition has become infructuous, and it will not be necessary for this court to examine the legality and validity of the order so far as it relates to the removal of the petitioner as the President for the purpose of holding the post as the President of the Municipality is concerned. However, if the legality of the said order is not examined keeping in view the provisions of Section 11(1) of the Act, same is likely to create further complications in future for the petitioner for contesting the election as the Councillor of the Municipality and therefore matter will have to be examined to that extent accordingly.

10. There is no dispute on the point that so far as the order for removal is concerned, it pertains to the functioning of the petitioner as the President of the Municipality and it is now no more connected with the status or functioning of the petitioner as the councillor of the Municipality. This court for the reasons recorded in in the decision dated 19-21/06/02 in the matter of Patel Kantilal Muljidas vs State of Gujarat (Spl.C.A.No.3788/02) has held that the office of the

President or the Chairman of the Statutory committee is altogether different than the office of the Councillor of the Municipality and unless the act is overlapping if a person has misconducted himself in capacity as the President or office bearer of the statutory committee, he or she can not be removed as the councillor of the municipality and since elaborate discussion is already made in the aforesaid judgment, I find it proper not to reproduce the same but it is sufficient to state for the reasons recorded in the said judgment in any case even if those allegations are accepted, the petitioner will be entitled to continued as the councillor of the municipality. In the present case, there is one additional aspect which is in favour of the petitioner, that the post-facto sanction is granted by the Municipal Finance Board which is the competent authority to sanction the budget for the purpose of laying the pipeline. If any person on the allegation of misconduct as the President of the Municipality is removed as the councillor of the municipality and if such removal as the councillor of the municipality can not stand in the eye of law, I find that there is no justification to continue the said disqualification for recontesting as the councillor. The reason being that if for the remainder of the term as per law a person can continue as the councillor even if he is removed as the President of the Municipality, there is no basis for not allowing him to contest fresh election as the councillor where he will have to go to public seeking fresh mandate for getting himself elected as the councillor. As a matter of fact, disqualification would affect with more vigour when a person is holding the office as a councillor. As laid down earlier, if such disqualification can not stand for continuing as the councillor and I find that such disqualification in any case should not come in the way of a person to contest as the councillor where, in any case, he will be required to go to public for seeking fresh mandate.

11. Considering the above, I am of the view that the order passed by the Director of Municipalities, in any case, should not come in the way of the petitioner for seeking fresh mandate by contesting the election as councillor in future and as a consequence thereof it will have to be held that the impugned order shall not operate as a disqualification against the petitioner for contesting fresh election as the councillor in view of section 11(1)(a)(ii) of the Act.

12. In view of the above discussion, the order dated 1.7.01 passed by the Director of Municipalities so far as it relates to the removal of the petitioner as the councillor of the Municipality is concerned is maintained and for the post of President is concerned the matter is disposed of as it has become infructuous. However, the order shall not operate as a disqualification under section 11(1)(a)(ii) of the Act to the petitioner to contest fresh election as councillor and the petitioner will be at liberty to contest the election for the post of Councillor and shall not be deprived of that opportunity on the ground of order of removal, dated 1.7.02 as President of the Municipality.

13. The petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

23.7.02 (JAYANT PATEL,J)